

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

DISCOTHEQUE, INC., and THELMORE
JAMES LESTER, as Executor of the
Estate of James Thelmore Lestor, and
Next of Kin,

PLAINTIFFS,

v.

AUGUSTA-RICHMOND COUNTY,
GEORGIA,

and

MAYOR HARDIE DAVIS, JR., WILLIAM
FENNOY, DENNIS WILLIAMS, MARY
DAVIS, SAMMIE SIAS, BOBBY
WILLIAMS, BEN HASAN, SEAN
FRANTOM, BRANDON GARRETT,
MARION WILLIAMS, AND JOHN
CLARKE, all in their individual capacities
as Members of the Augusta-Richmond
County Commission,

DEFENDANTS.

CIVIL ACTION NO.:
1:19-cv-00074

DEFENDANTS' RESPONSE TO PLAINTIFFS' BRIEF ON STANDING

COME NOW Defendants Augusta, Georgia, Mayor Hardie Davis, Jr., William Fennoy, Dennis Williams, Mary Davis, Sammie Sias, Bobby Williams, Ben Hasan, Sean Frantom, Brandon Garrett, Marion Williams, and John Clark, and file this Response to Plaintiffs' Brief on Standing, showing the Court the following:

I. INTRODUCTION

On January 10, 2020, this Court held a show cause hearing to determine whether the Plaintiffs possessed standing. *See* Doc. 14. To establish standing in an action for

declaratory judgment and injunctive relief, a plaintiff must allege that there is a substantial likelihood that he will suffer injury in the future. *AA Suncoast Chiropractic Clinic, P.A. v. Progressive Am. Ins. Co.*, 938 F.3d 1170, 1179 (11th Cir. 2019). Following the hearing, this Court is primarily concerned with whether Plaintiffs alleged an injury sufficient to challenge Augusta, Georgia's Adult Zoning Code and Alcohol Code.

II. ARGUMENT

A. Adult Zoning Code

Plaintiffs challenge the location restrictions for adult entertainment establishments that are enumerated in § 28-C-3 of Augusta's Comprehensive Zoning Ordinance. *See* Doc. 1, ¶ 47. While not explicitly stated in the Complaint, it is Defendants' understanding that Plaintiffs allege that there is a substantial likelihood that Plaintiffs will no longer be able to operate their adult entertainment businesses in the current locations now that James Lester has died. *See* Doc. 1, ¶¶ 64 – 68; *See also* Doc 16, p. 6. As that allegation seems to meet the standing requirement for declaratory and injunctive relief, Defendants do not dispute Plaintiffs' standing to challenge the Adult Zoning Code.

B. Alcohol Code

Plaintiffs complaint with the Alcohol Code is seemingly that it prevents Plaintiffs from obtaining alcohol licenses if they continue to operate adult entertainment businesses. Doc. 1, ¶ 68. Plaintiffs assert that it is unconstitutional for Augusta to prohibit them from serving alcohol and operating adult entertainment businesses simultaneously, which gives them standing to challenge the Alcohol Code. Plaintiffs cite Augusta, Georgia Code § 6-2-27(b) in support of their argument that they have standing. However, § 6-2-27(b) was repealed on March 19, 2019 with the adoption of Ordinance 7654. *See* Exhibit A. Section 6-2-27 now states:

A business tax certificate holder for an adult dance establishment/erotic dance establishment that can be permitted under the guidelines of the Augusta, Georgia Adult Entertainment Ordinance, is eligible to apply for on-premise alcohol licenses; provided however, nothing herein contained shall affect any vested rights.

Nothing in the Alcohol Code prevents Plaintiffs from having both alcohol licenses and business tax certificates to operate adult entertainment businesses. Thus, Plaintiffs have not alleged a substantial likelihood that they will suffer an injury in the future, and Plaintiffs do not have standing to challenge the Alcohol Code.

III. CONCLUSION

For the foregoing reasons, Defendants do not dispute Plaintiffs standing to challenge the Zoning Code. However, this Court should find that Plaintiffs lack standing to challenge the Alcohol Code.

Respectfully submitted this 28th day of January, 2020.

/s/Tameka Haynes
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CERTIFICATE OF SERVICE

This is to certify that the within and foregoing **Response** was served upon the following parties in accordance with ECF rules by electronically filing a copy with the Clerk of Court using the CM/ECF system or by depositing a copy in the United States Mail with adequate postage thereon to:

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This 28th day of January, 2020.

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